

## IN THE SUPREME COURT OF ARIZONA

KAREN FANN, in her official capacity  
as President of the Arizona Senate;  
WARREN PETERSEN, in his official  
capacity as Chairman of the Senate  
Judiciary Committee; and the  
ARIZONA SENATE, a house of the  
Arizona Legislature,

Petitioners,

vs.

THE HONORABLE MICHAEL KEMP,  
Judge of the SUPERIOR COURT OF  
THE STATE OF ARIZONA, in and for  
the County of MARICOPA,

Respondent Judge,

AMERICAN OVERSIGHT,

Real Party in Interest.

Case No. CV-22-0018-PR

Arizona Court of Appeals  
Division One  
No. 1 CA-SA 2021-0216

Maricopa County Superior Court  
Nos. CV2021-008265 and  
LC2021-000180-001  
(Consolidated)

### **PHOENIX NEWSPAPERS, INC.'S AND KATHY TULUMELLO'S REPLY IN SUPPORT OF REQUEST TO BE CONSIDERED REAL PARTIES IN INTEREST**

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and Kathy Tulumello*

Phoenix Newspapers, Inc. and Kathy Tulumello (together, “PNI”) respectfully submit this Reply in Support of their Request to Be Considered Real Parties in Interest.

While this matter, which involves the scope of the legislative privilege under Arizona law, was pending before the Arizona Court of Appeals, PNI’s lawsuit against the Arizona Senate, Karen Fann, Warren Petersen, Susan Aceves (the “Senate”) and Cyber Ninjas, Inc. was consolidated with the lawsuit filed by American Oversight.

In his January 19, 2022, order of consolidation (the “Consolidation Order”), the Hon. Judge Michael Kemp found that rulings relating to the scope of the legislative privilege had previously been made by the Hon. John Hannah in PNI’s case prior to consolidation, and that the “the Court of Appeals’ [forthcoming] ruling will be the law of the case on the issue of legislative privilege.” *See* PNI’s 1/27/2022 Request to Be Considered Real Parties in Interest (the “Request”) Ex. A at 2.

On the basis of these facts, PNI filed its January 27, 2022 Request, so that it could be heard directly in response to the Senate’s Petition for Review of the Court of Appeals’ January 21, 2022 Opinion (the “Opinion”) regarding the scope of the legislative privilege.

In their January 31, 2022 response to PNI’s Request (the “Response”), the Senate argues that PNI’s interests are effectively “divorced” from these proceedings because consolidation does not merge PNI’s case with the case filed by American Oversight. *See* Response at 2. Instead, according to the Senate, PNI maintains its own independent right to appeal any adverse rulings.<sup>1</sup> *See* Response at 2.

The Senate’s argument ignores the reality that the Court of Appeals’ Opinion *directly* impacts PNI’s rights with respect to the Senate’s assertion of a broad legislative privilege over records sought by PNI. That much is made clear by the language of the Consolidation Order, which states that the Opinion would constitute the law of the case and be binding directly as to PNI, and by the Court of Appeals’ Opinion, which rejected the Senate’s expansive view of the legislative privilege – the same privilege the Senate is asserting to conceal records sought by PNI.

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<sup>1</sup> If accepted, the Senate’s arguments would create absurd results. It could create multiple appellate proceedings (one filed relating to American Oversight’s legal rights and another filed relating to PNI’s legal rights) resulting from an order regarding a single legal issue in these consolidated proceedings.

The Senate's argument that PNI's rights are ancillary to these proceedings is also inconsistent with the Senate's two previous requests to consolidate the case filed by American Oversight with the case filed by PNI. *See* Request Ex. A at 1. The bases of the Senate's requests that these two matters be consolidated – that they involved common questions of law and fact – is now being ignored by the Senate for purposes of opposing PNI's Request. The overlapping factual and legal issues in this consolidated action, coupled with the fact that the Opinion and any forthcoming ruling from this Court would directly affect PNI's rights, call for PNI to be heard directly as a real party in interest.

For these reasons the Request should be granted and PNI should be permitted to appear as a real party in interest in this matter to be directly heard as to why the Opinion was a proper affirmation of long-standing Arizona law regarding the scope of the legislative privilege and why Senate Defendants' Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 2nd day of February, 2022.

By: /s/ Craig C. Hoffman

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